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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of Sections 11 and 13	)	
of the Cable Television Consumer	)	MM Docket No. 92-264
Protection and Competition Act of 1992	)	
	)	
Horizontal and Vertical Ownership	)	
Limits, Cross-Ownership Limitations	)	
and Anti-Trafficking Provisions	)	

To: The Commission

FURTHER REPLY COMMENTS OF VIACOM INTERNATIONAL INC.

VIACOM INTERNATIONAL INC.

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SUMMARY

Viacom International Inc. ("Viacom") hereby submits its reply comments relating to the Notice of Proposed Rulemaking to implement Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act" or the "Act"). The comments are limited to issues relating to Channel Occupancy Limits and Participation in Program Production.

The majority of commentors agree with Viacom's view that, in promulgating regulations, the Commission must consider the First Amendment implications of channel occupancy limits as well as the existence of other provisions of the 1992 Cable Act designed to

channel occupancy limits should be provided for such new services for a period of at least five years.

Most commentors agree that the channel occupancy limits should apply only to program services under common ownership with the particular cable operator because there is no incentive for a cable operator to carry a program service merely because it is offered by another vertically integrated entity.

The majority of commentors also agree that, in calculating channel occupancy limits, the Commission should include channels devoted to leased access, must-carry and PEG programming because they add to the diversity sought by the Act. Commentors opposing such an approach fail to provide any justification for excluding these channels.

Any channel occupancy limits ultimately adopted should be removed in situations in which a cable operator is or has become subject to effective competition. There is no rationale for maintaining regulations designed to approximate the functioning of a competitive marketplace once that marketplace actually exists.

With regard to participation in program production, most commentors urge the Commission to follow its tentative conclusion to impose no restrictions at this time. The few commentors urging restrictions are either protected by other provisions of the Act or are seeking competitive advantages not mandated by the Act.

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Viacom International Inc. ("Viacom"), by its attorneys, hereby submits its supplemental reply comments in the above-referenced proceeding which relates to Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act" or the "Act"). Because the Commission recognized that the manner in which it implemented certain other aspects of the 1992 Cable Act, particularly the Act's program

I. Channel Occupancy Limits

The majority of comments filed in this proceeding essentially agreed with Viacom that, because of the significant First Amendment considerations raised by channel occupancy limits as well as the existence of other provisions of the 1992 Cable Act that restrict the ability of vertically integrated program services to act in an anti-competitive manner, any regulations promulgated here should provide cable operators with the broadest latitude possible under the Act to select and carry programming of their own choosing. Viacom Comments at 3-4; see also Comments of Discovery Communications, Inc. at 12-19; Comments of Liberty Media Corporation at 13-28; Comments of National Cable Television Association ("NCTA") at 24-36.

As both Congress and the Commission have determined, vertical integration has increased the quantity and quality of program services available to the consumer today. See, e.g., House Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. (1992) ("House Report") at 41; Notice of Proposed Rulemaking in MM Docket No. 92-264, FCC 92-542 (rel. Dec 28, 1992) ("NPRM") at ¶ 6. In the 1992 Cable Act, Congress sought to retain the benefits of vertical integration and, at the same time, limit the ability of vertically integrated entities to act in an anti-competitive manner. In achieving this balance, Congress directed the Commission "to rely on the marketplace, to the maximum extent possible." 1992 Cable Act, § 2(b)(2).

In its initial comments, Viacom accordingly proposed the following with regard to the implementation of any channel occupancy limits:

- to avoid disruption of established viewing patterns, the Commission should grandfather the carriage of any affiliated program service currently carried by a vertically integrated cable operator

- because it can be presumed that popular program services are not being carried for anti-competitive reasons, the channel occupancy limits should not apply to any program service that is carried on non-affiliated cable systems that collectively serve more

Recently, the Commission announced rules to implement the leased access and program access provisions of the 1992 Cable Act. See Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 93-177 (rel. May 3, 1993), ¶ 485 ("R&O/FNPRM"); Report and Order in MM Docket No. 92-265, FCC 93-178 (rel. Apr. 30, 1993). In Docket 92-266, for example, the Commission promulgated regulations for leased commercial access that will "provide programmers a 'genuine outlet' for their product." R&O/FNPRM at ¶ 498. The leased access rules, which require a cable operator to devote up to 15%

designed to assure the Commission that a particular carriage decision was driven by reasons unrelated to common ownership. Under the proposal, a vertically integrated program service will be exempt from any channel occupancy limits if it is carried by cable systems not under common ownership with the programmer that serve more than 50% of cable subscribers nationwide (excluding cable subscribers to the commonly-owned systems). This test will ensure that subscribers to a vertically integrated cable system are not deprived of a desirable program service and, at the same time, will preclude vertically integrated cable operators from unfairly favoring commonly-owned program services.

B. Limits Should Apply Only to National Program Services Under Common Ownership With the Particular Cable Operator

The vast majority of commentors agreed with the Commission that any channel occupancy limits ultimately adopted should be applied "only to video programmers affiliated with the particular cable operator." See, e.g., Joint Comments of Cablevision Industries Corp. and Comcast Corp. at 34; Comments of Cablevision Systems Corp. at 10; Comments of The Motion Picture Association of America, Inc. ("MPAA") at 7.[1] Because a cable operator can gain no benefit from carrying a program service offered by a non-

[1] Indeed, even the stringent, anti-competitive regulations proposed by the Association of Independent Television Stations, Inc. ("INTV") recognized that any limit should apply only to program services in which the particular cable operator in question has an equity interest. See Comments of INTV at 12.

affiliated vertically integrated entity instead of a more popular program service, there is no need to place any limits on the ability of a cable operator to carry program services offered by others.

There was also little opposition to Viacom's proposal that the limits apply only to national program services. This approach will encourage cable operators to produce local programming specifically designed to serve their franchise areas. See Comments of Viacom at 11. For similar reasons, the proposal for a limited five year exemption for new program services should be adopted as it will help achieve the statutory objective of increasing program diversity. See Comments of Viacom at 8-9.

C. Must-Carry, Leased Access, and PEG Channels Should Be Included in Any Channel Occupancy Calculation

Although most commentors also agreed that must-carry, leased access, and PEG channels should be included in the calculation to determine the channel occupancy limits, a handful of commentors urged the Commission to exclude these channels from the calculation. See Comments of NATOA at 21; Comments of INTV at 11. Not only do these commentors fail to provide any justification for excluding these channels, their approach runs counter to the goals of the provision. As set forth in Viacom's initial comments, these channels are properly included in the "base" for determining any applicable channel occupancy limits

competition but is to remove a bidder from the program acquisition marketplace.[2] See id. at 13. This is neither contemplated by the 1992 Cable Act -- which recognizes the benefits of vertical integration -- nor in the best interests of the consumer. Indeed, to freeze the ability of cable operators to invest in new program services would both limit the ability of new ventures to obtain needed capital and discourage cable operators from implementing new technologies, thereby limiting program development and consumer choice.[3]

E. No Limits Should Apply Where Effective Competition Exists

Viacom proposed that channel occupancy limits should be removed in systems that are or become subject to effective competition. Comments of Viacom at 17. MPAA argues that the Commission "should not automatically eliminate the channel caps for cable systems in communities where effective competition has developed." Comments of MPAA at 10. It speculates that if both the cable and alternative technology distributors were vertically

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[2] INTV goes so far as to propose that an MSO be required to "spin off" its programming interests in the event there is a transfer of control of the vertically integrated MSO. Comments of INTV at 12.

[3] INTV also, at least implicitly, would require a cable operator to delete existing services in order to achieve its channel occupancy limit. This approach would disrupt both service to subscribers (thereby disserving the public) and existing financial arrangements (e.g., commitments to advertisers). See Comments of Viacom at 9-11.

integrated, non-affiliated programmers could be denied access to both outlets. Id. This suggestion ignores marketplace realities. Where effective competition exists, competing distributors will be forced to provide potential subscribers with the programming they desire most, regardless of source. Indeed, the 1992 Cable Act was enacted because of a perceived absence of "effective competition" to cable operators. It would be illogical to maintain regulation designed to approximate the functioning of a competitive marketplace once that marketplace actually exists.

Accordingly, Viacom urges the Commission to adopt Viacom's proposals in order to afford cable operators both the continued ability to enhance the quality and quantity of video programming available to the consumer and the broad latitude for selecting and carrying programming of their choice.

II. Participation in Program Production

In the NPRM, the Commission tentatively concluded that the objectives of any restriction on the ability of a multichannel video program distributor ("MVPD") to participate in the production of programming were fully addressed by other provisions of the 1992 Cable Act. NPRM at ¶60. Viacom, and the majority of commentors, agreed with the Commission's approach. See Comments of Viacom at 19-20; Comments of TCI at 58; Comments of Liberty Media Corporation at 10; Comments of NCTA at 37.

A few commentors urged the Commission to limit or restrict this right. See Comments of Liberty Cable Company, Inc. ("Liberty") at 5; Comments of National Private Cable Association, et al. ("NPCA") at 14-19; Comments of INTV at 12-15. These commentors opposing the Commission's approach, however, are either adequately protected by other provisions of the Act or are seeking to obtain competitive advantages not mandated by the Act. NPCA and Liberty Cable, for example, are primarily concerned that they will be denied access to programming. Comments of Liberty at 5; Comments of NPCA at 16-17. Section 19 of the 1992 Cable Act, however, precludes cable operators and vertically integrated

INTV, on the other hand, consistent with its approach to channel occupancy limits, is not seeking to enhance consumer welfare, but is primarily interested in limiting the ability of cable operators to participate in program production in order to remove a player from the program acquisition and production markets. Comments of INTV at 13. Not only does INTV fail to offer any evidence to support its speculative claim that "cable can use its leverage to prevent development of new, independent program sources," but there is no guarantee that others will step in and fill the role of fostering new program services that, to date, has primarily been filled by cable operators. Indeed, the record is replete with instances in which fledgling program services, rejected by others, turned to the cable industry to provide them with needed financial resources. See, e.g., House Report at 41; Comments of Discovery Communications, Inc. at 2; Comments of E! Entertainment Television, Inc. at 3-4.

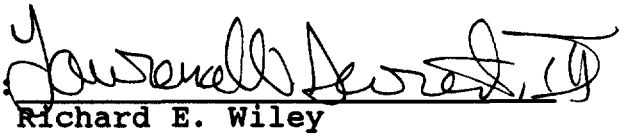
In sum, Viacom reiterates its belief that the Commission's tentative conclusion to adopt no restrictions on the ability of MVPDs to participate in the production of programming was correct. The 1992 Cable Act has resulted in the imposition of a wide range of regulations on the cable industry. To impose additional restrictions that are neither mandated by the 1992 Cable Act nor have been demonstrated to be necessary to achieve the goals of the Act would be totally unwarranted.

III. Conclusion

Accordingly, for the foregoing reasons, Viacom urges the Commission to follow its mandate to "rely on the marketplace, to the maximum extent possible" in implementing Section 11 of the 1992 Cable Act. The proposals set forth by Viacom in its initial comments regarding Channel Occupancy Limits and Participation in Program Production (in conjunction with the Commission's actions in implementing other provisions of the Act) will achieve this result and should be adopted.

Respectfully submitted,

VIACOM INTERNATIONAL INC.

By: 

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